IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)
WEDNESDAY, THE SIXTEENTH DAY OF JUNE
TWO THOUSAND AND FOUR
PRESENT
THE HON'BLE SRI DEVINDER GUPTA,THE CHIEF JUSTICE
and
THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 11918 of 2003

Between:

1 V.Amarnath S/o. V.Anjaneyulu, Occ: Chartered Accountant
R/o. 12-5-17/1/4, South Lalaguda, Secunderabad.

2 Smt Rekha V.Amarnath W/o. V.Amarnath, Occ: Housewife

3 Suman V.Amarnath S/o. V.Amarnath

(Petitioners 1 to3 are R/o. 12-5-17/14, South Lalaguda, Secunderabad.)

4 V.Purushotham Rao s/o. Sri V.V.L.Narasimha Rao
R/o. Flat No.403,Kanchan Towers Golconda X Roads, Musheerabad.
Hyderabad

..... PETITIONER(S)

AND

1 The Union of India, Rep by Secretary Ministry of Law,
Shastri Bhawan, R.P. Road, New Delhi

2 The Asst.General Manager (Authorised Officer).M/s Prudential Co-Op Bank
Ltd., 8-1-381,R.P. Road, Secunderabad - 3.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to strike down the Securitisation and Reconstruciton of Financial

Assets and Enforcement of Security Interest Act, 2002, and STRICKING DOWN the provision of Section 13, 15 and 34 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest ACT, 2002 and "Quash" the NOTICE DATED 03-05-2003 issued by the Respondent No.2 Bank and consequently Stay all further proceedings pursuant to the said Notice Dt. 03-05-2003, issued by the Respondent No. 2 Bank.

Counsel for the Petitioners:MR.M.NAGA RAGHU

Counsel for the Respondent No.1: MR. A. Rajasekhara Reddy, Standing Counsel for Central Government.

Counsel for the Respondent No.2: Mr. S. Ashok Anand Kumar

AND

W.P.M.P. No. 14828 of 2003

Petition under Section 151 C.P.C. praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to grant stay of all further proceedings pursuant to the notice dated 3.5.2003 issued by respondent No.2 under Section 13(2) of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, pending disposal of the Writ Petition.

Counsel for the petitioner : Mr. M. Naga Raghu

Counsel for the Respondent No.1: Mr. A. Rajasekhara Reddy

Standing Counsel for Central Government .

Counsel for Respondent No.2: Mr. S. Ashok Anand Kumar

The Court Made the Following Oral Order: (**per Hon'ble The Chief Justice)**

1. In view of the decision rendered by the Hon'ble Supreme Court in Transfer Case (Civil) No.92-95 of 2002, dated 8th April, 2004 [MARDIA CHEMICALS LTD v UNION OF INDIA & ORS] upholding the constitutional validity of the provisions of the Securitisation And Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, barring sub-section (2) of Section 17 of the Act, which was declared as ultra vires of Article 14 of the Constitution of India, this petition deserves to be decided in terms of the said decision. The Supreme Court in MARDIA CHEMICALS case has held that before taking action by the Bank under the provisions of the Act, a notice of 60 days is required to be given by the bank and after the measures under Section 13 (2) of the Act have been taken, mechanism has been provided under Section 17 of the Act to approach Debts Recovery Tribunal. Supreme Court has further held thus:

> "1. Under sub-section (2) of Section 13 it is incumbent upon the secured creditor to serve 60 days notice before proceedings to take any of the measures as provided under sub-section (4) of Section 13 of the Act. After service of notice, if the borrower raises any objection or places facts for consideration of the secured creditor, such reply to the notice must be considered with due application of mind and the reasons for not accepting the objections, howsoever brief they may be, must be communicated to the borrower. In connection with this conclusion we have already held a discussion in the earlier part

of the judgment. The reasons so communicated shall only be for the purposes of the information/knowledge of the borrower without giving rise to any right to approach the Debt Recovery Tribunal under Section 17 of the Act, at that stage.

2. As already discussed earlier, on measures having been taken under sub-section (4) of Section 13 and before the date of sale/auction of the property it would be open for the borrower to file an appeal (petition) under Section 17 of the Act before the Debt Recovery Tribunal.

3. That the Tribunal in exercise of its ancillary powers shall have jurisdiction to pass any stay/interim order subject to the condition as it may deem fit and proper to impose.

4. In view of the discussion already held on this behalf, we find that the requirement of deposit of 75% of amount claimed before entertaining an appeal (petition) under Section 17 of the Act is an oppressive, onerous and arbitrary condition against all the canons of reasonableness. Such a condition is invalid and it is liable to be struck down.

5. As discussed earlier in this judgment, we find that it will be open to maintain a civil suit in civil court, within the narrow scope and on the limited grounds on which they are permissible, in the matters relating to an English mortgage enforceable without intervention of the court."

2. In view of the decision of the Supreme Court upholding constitutional validity of the offending provisions of the Act, we dismiss the writ petition thereby reserving liberty to the petitioner to work out his/its remedies as provided under the Act including filing of appeal under Section 17 of the Act within the period of limitation prescribed therefor, to be counted from today.

3. In view of the dismissal of the writ petition, the interim directions stand vacated and the WPMP stands disposed of as such.

ASSISTANT REGISTRAR

// TRUE COPY//

SECION OFFICER

To

1. The Secretary, Ministry of Law,
   Sastry Bhavan, R.P.Road
   New Delhi.

2 The Asst.General Manager (Authorised Officer),
   M/s Prudential Co-Op Bank Ltd.,
   8-1-381,R.P. Road, Secunderabad - 500 003

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